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OFFICE OF PETITIONS

Applicant: Kanemaru, et al.

Issue Date : Nov. 21, 2008

Application No: 10/679,298

Patent No. 7,449,193 Filed: October 7, 2003

Attorney Docket: 053466-0372

ON PETITION

37 CFR 1.705(d)

: REQUEST FOR RECON

: PATENT TERM

: ADJUSTMENT

This is a decision on the petitions filed on January 5, 2009 and January 15, 2010 which are being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one hundred and fifty-eight (158) days.

The request for reconsideration of patent term adjustment is GRANTED-IN-PART. The Office notes that this decision is based upon the petition filed on January 8, 2009 and NOT the petition filed on January 15, 2010 as the latter filed petition would have been deemed untimely. The PTA is 84 days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e), paid on January, 2009. No additional fees are required.

Patentees request recalculation of the patent term adjustment based on the decision in $\underline{\text{Wyeth v. Dudas}}$, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008). Patentees assert that in view of the decision in $\underline{\text{Wyeth}}$, they are entitled to a total patent term adjustment of 158 days. Applicants believe that the amount of PTA is the following:

- 1) Non-overlapping PTA days of under "A" and "B" is 459
- 2) Applicant delay of 301 days

Total PTA of 158.

The Office has determined that the amount of "A" delay is 101 days. The amount of "B days" is 284 days. The "B delay is determined from the day after the 36 months, i.e., from October 8, 2006 until one day before the filing of an RCE or issue date, in this case the RCE was filed on September 28, 2007; hence the "B" period extends from October 8, 2006 until September 27, 2007 for a total of 355 days. However, pursuant to 37 CFR 1.703(b)(4) a reduction against B is for the period of 71 days beginning on the date of filing of the notice of appeal and ending on the date of the mailing of a non-final rejection on September 11, 2006. Accordingly, the "B" delay amounts to 284 days, 355-71=284 days. None of the "A" delay overlaps with any of the "B" delay and accordingly the amount of non-overlapping PTA days is 385. The amount of applicant delay as stated by appellant is 301 days. Accordingly, the amount of PTA at the time of the issuance of the patent is eighty-four (84) days.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The applicant is giving one month or thirty (30) days whichever is longer to reply to this DECISION. After the response period has elapsed, the Office will sua sponte issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by eighty-six (84) days.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office has assessed the \$200.00 request fee. No additional fees are required in this matter.

Telephone inquiries specific to this decision should be directed to Maria Nuzzolillo, Legal Advisor, at (571) 272-8150, or the undersigned at 571-272-7757.

/Kery A. Fries/

Kery A. Fries Senior Legal Advisor Office of Patent Legal Administration Office of Deputy Commissioner for Examination Policy

Day: Thursday

Date: 7/1/2010 Time: 12:30:37

* PALM INTRANET

PTA Calculations for Application: 10/679298						
Application Filing Date: 1	10/07/2003	PTO Delay (PTO):	365			
Issue Date of Patent: 1	11/11/2008	Three Years:	0			
Pre-Issue Petitions:) .	Applicant Delay (APPL):	301			
Post-Issue Petitions:)	Total PTA (days):	84			
PTO Delay Adjustment: 2	20					

File Contents History					
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84		PATENT ISSUE DATE USED IN PTA CALCULATION			
83	10/15/2008	EXPORT TO FINAL DATA CAPTURE			
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80	10/07/2008	ISSUE FEE PAYMENT VERIFIED			
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61	03/06/2008	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
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35.7	03/09/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
35		INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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